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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 11-FH-493  
 )  
 Claimant. ) Division Case No. [REDACTED]  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was receiving Medicaid benefits for her minor child under the Denali KidCare program (Denali KidCare) in November 2011. (Ex. 1) The Claimant applied to renew her child's Denali KidCare benefits on November 29, 2011. (Exs. 2.0 – 2.2) On December 7, 2011, the Division of Public Assistance (Division) sent the Claimant notice her child's Denali KidCare benefits would terminate effective December 31, 2011 because her household income exceeded the Denali KidCare program's income limit. (Ex. 4)

The Claimant requested a fair hearing on December 12, 2011. (Exs. 5.0 – 5.1) This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on January 24, 2012. The Claimant appeared in person and represented herself. [REDACTED], Public Assistance Analyst with the Division, appeared in person; she represented and testified on behalf of the Division.

**ISSUE**

Was the Division correct to terminate the Claimant's minor child's Denali KidCare benefits effective December 31, 2011 because her household income allegedly exceeded the Denali KidCare program's income limit?

## FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The Claimant has a two person household, which is comprised of herself and one minor child. (Ex. 1) The Claimant's minor child has health insurance coverage. (Ex. 2.0)
2. The Claimant was receiving Medicaid coverage for her minor child under the Denali KidCare program (Denali KidCare) beginning in January 2011. (Ex. 1) She applied to renew her child's Denali KidCare benefits on November 29, 2011. (Exs. 2.0 – 2.2)
3. The Claimant receives monthly child support payments in the amount of \$2,227.50. (Exs. 2.1, 2.6, 2.8) She also receives monthly spousal support in the amount of \$700. (Exs. 2.1, 2.7)
4. The Claimant is self-employed. Her monthly gross self-employment income varies, and the Claimant estimates that her average gross monthly self-employment income is \$1,300. (Ex. 2.1) The Claimant billed out \$1,587.50 to her client during the month of October 2011. (Ex. 2.3)
5. The Division's Eligibility Technician who processed the Claimant's Denali KidCare renewal application calculated that the Claimant's gross monthly income, not including her self-employment income, was \$2,927.50.<sup>1</sup> (Exs. 3, 4) The Division Eligibility Technician then determined that the Claimant was not financially eligible for Denali KidCare benefits. *Id.*
6. The Division sent the Claimant written notice on December 7, 2011 that her minor child's Denali KidCare coverage would be terminated effective December 31, 2011 because her household's monthly countable income of \$2,927.50, not including the Claimant's self-employment income, exceeded Denali KidCare's income limit of \$2,298 for a two person household. (Ex. 4)
7. The Claimant has COBRA health insurance which cost her \$697.23 per month in 2011 and which now costs her \$719.24 per month beginning with the month of January 2012. (Exs. 5.1 – 5.2)
8. The Claimant testified the reason she received monthly spousal support of \$700 was to pay for her COBRA health insurance. (Claimant testimony) The Claimant's divorce documents which award her the monthly spousal support in the amount of \$700 do not contain any restrictions upon its use. (Claimant testimony, Ex. 2.7)

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<sup>1</sup> The Eligibility Technician arrived at this amount by adding together the Claimant's monthly child support payment (\$2,227.50) and the Claimant's monthly spousal support. (\$700). (Exs. 3, 4)

## PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

“The agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 CFR 435.930.

Denali KidCare is a form of Family Medicaid coverage provided to children under the age of 19, pregnant women, post partum women and newborn children in households that are not financially eligible for regular Family Medicaid coverage. *See Alaska Medical Assistance Manual* §5300.

Denali KidCare has its own financial eligibility criteria. For households with health insurance, Denali KidCare provides Medicaid coverage if the household income does not exceed “150 percent of the federal poverty guidelines for” Alaska. 7 AAC 100.312(a)(1).

When determining financial eligibility for an applicant child, the Division is to count the income of the parents who reside with the child. 7 AAC 100.312(b). Child support and spousal support are both counted as income to the household. 7 AAC 100.158; 7 AAC 100.310(a). The monthly income eligibility limit for a household of two with health insurance coverage is \$2,277. *Alaska Family Medicaid Eligibility Manual* Addendum 1.

For the purposes of determining financial eligibility under Denali KidCare, there is a \$90.00 deduction “from the total gross monthly earned income of each individual included in the household who is employed and has not received Medicaid benefits in the state in any of the four months immediately preceding that individual’s current eligibility for assistance under this chapter.” 7 AAC 100.184(a)(1); 7 AAC 100.310(a) and (b)(8). Denali KidCare does not allow a deduction or income exemption for health insurance premiums paid by an applicant/recipient. 7 AAC 100.184(a)(1); 7 AAC 100.310(a).

\$50 of monthly child support payments that an “applicant or recipient [receives] directly” from the other parent is exempt, i.e. not counted, as part of the applicant/recipient’s income. 7 AAC 100.166(b); 7 AAC 100.310(a).

A child is considered insured for the purposes of determining Denali KidCare eligibility if the child has individual, governmental, or private group health insurance coverage. 7 AAC 100.314(a).<sup>2</sup> A child is considered insured if she has health insurance, as defined in

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<sup>2</sup> There are other applicable insurance categories contained in the regulation 7 AAC 100.314(a): Medicare, Medicaid, Tricare, a state high-risk insurance pool, a state or local government health plan, and a Peace Corp Volunteer health benefit plan.

7 AAC 100.314(a), “regardless of whether the health plan requires cost-sharing of any amount or does not cover a particular illness or procedure the child needs.” 7 AAC 100.314(c).

### ANALYSIS

The issue in this case is whether the Division was correct when it terminated the Claimant’s minor child’s Denali KidCare coverage because the household made too much money to qualify for the Denali KidCare program. Because the Claimant’s household had previously been approved for Denali KidCare benefits and because the Medicaid program, pursuant to 42 CFR 435.930(b), presumes that Medicaid recipients remain eligible “until they are found to be ineligible,” the Division is the party seeking to change the status quo. The Division therefore has the burden of proof by a preponderance of the evidence to demonstrate that the Claimant is no longer eligible for Denali KidCare coverage for her minor child.

The Claimant argued her \$700 in monthly spousal support should not be counted as part of her income because it is used to pay her monthly COBRA premium. However, the Denali KidCare regulations do not contain either an exemption from income (such as for the first \$50 of child support received) or a deduction from income (such as the first \$90 of employment income) for health insurance premiums. *See* 7 AAC 100.166(b); 7 AAC 100.184(a); 7 AAC 100.310(a). As a result, the Division is required to count the Claimant’s spousal support as part of her monthly income when determining the Claimant’s minor child’s financial eligibility for Denali KidCare benefits, and the Claimant is not allowed to deduct her monthly COBRA premium amount from her monthly income.

Because the Claimant has health insurance coverage for her child, in order for the Claimant to be eligible for Denali KidCare coverage for her minor child, her household income for a two person household, after deductions, must be less than \$2,277. *Alaska Family Medicaid Eligibility Manual Addendum 1*.

The Claimant’s total gross monthly household income consisting of child support income and her monthly spousal support payment, excluding her self-employment income, is \$2,927.50.<sup>3</sup> The Denali KidCare program allows a \$50 dollar exemption from child support income. *See* 7 AAC 100.166(b); 7 AAC 100.310(a). Applying that exemption, the Claimant’s monthly income totals \$2,877.50.

The Claimant’s \$2,877.50 in monthly income exceeds the Denali KidCare’s monthly income limit of \$2,277 for a two person household with health insurance coverage. *Alaska Family Medicaid Eligibility Manual Addendum 1*. The Claimant was therefore not eligible to receive Denali KidCare coverage for her minor child based upon the income for her two person household. The Division has met its burden of proof by a

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<sup>3</sup> This figure would undoubtedly be higher if the Eligibility Technician had factored in the Claimant’s self-employment income, which the Claimant estimated averaged \$1,300 per month. *See* Finding of Fact 4 above.



